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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI SATISH K. AGNIHOTRI, J.

MISC. APPEAL NO.1186 OF 2005

APPELLANT : The New India Insurance Company Ltd., Raipur, Through: Its Divisional Manager, Divisional Office, Bilaspur (C.G.).

VERSUS

RESPODNENTS :

(1) Smt.. Saraswati Thakur, 35 years
Wd/o Late Shri Kamal Singh Thakur

(2) Shri Kunal Singh Thakur, 13 years
S/o Late Shri Kamal Singh Thakur

(3) Shri Jitendra Singh Thakur, 10 years
S/o Late Shri Kamal Singh Thakur

(4) Ku. Trishna Thakur, 9 years
S/o Late Shri Kamal Singh Thakur

Respondents 2 to 4 are minor, Through their guardian-mother, Respondent No. 1 Smt. Sarswati Thakur, All R/o Naharpara, Police Station – Ganj, Raipur, Tahsil & District – Raipur (C.G.)

(5) Mohd. Rahis @ Mohd. Rais,
S/o Shri Ajeej, 34 years,
R/o Railway Colony, Dalli Rajhara, P.S. Dalli Rajhara, Tahsil – Balod, District – Durg (C.G.)
- Driver –

(6) Shri Ashraf Meman, 32 years,
S/o Shri Abdul Sattar,
R/o Village – Kusumkasa, P.S. Dalli Rajhara, Tahsil – Balod, District – Durg (C.G.)
- Owner –

(7) Smt. Sato Bai, 60 years
Wd/o Late Shivpal Singh,
R/o Near Turi Hatri, Nadi Chowk,
Tikrapara, Raipur (C.G.)

Present: Mr. Ali Asgar, learned counsel for the appellant.
Mr. Shivendu Pandya, learned counsel for respondents 1 to 4.

ORAL ORDER
(Passed on 05th December 2005)

This appeal is not yet admitted. On service of notice, respondents 1 to 4 have filed I.A. No.2848 of 2005 raising a preliminary objection with regard to the maintainability of this appeal. This appeal is preferred by the Insurance Company calling in question the validity and correctness of the impugned award on merit. It is needless to stated that the Insurance Company cannot be permitted to assail the impugned award on merit unless it sought permission before the MACT by filing application under Section 170 of the Motor Vehicles Act, 1988 (*for short 'the Act'*) to contest the claim of the claimants on merit. Although it was stated by learned counsel for the appellant/Insurance Company that such an application was moved before the tribunal on 25/06/2005 four days before the impugned award was passed, from the original records, we could see that that application was not pressed by the learned counsel for the Insurance Company. It is also seen that the application was moved after the evidence was over. In the context, we hold that though the Insurance Company filed an application under Section 170 of the Act on 25/06/2005 it did not press that application for orders before the Tribunal and in fact it has abandoned that application.

(2) In that view of the matter, we find merit in the application (I.A. No.2848 of 2005) filed by respondents 1 to 4. We hold that this

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appeal is not maintainable and it is accordingly dismissed as not maintainable.

Sd/-
CHIEF JUSTICE

Sd/-
SATISH K. ANGNIHOTRI
Judge

Brajesh*